



State of New Jersey  
DEPARTMENT OF THE TREASURY  
DIVISION OF THE RATEPAYER ADVOCATE  
31 CLINTON STREET, 11TH FLOOR  
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CHRISTINE TODD WHITMAN  
Governor

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Blossom A. Peretz  
Director

BRIAN W. CLYMER  
State Treasurer

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April 11, 1996

**VIA FEDERAL EXPRESS**

Office of the Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: In the Matter of the  
Federal-State Joint Board on  
Universal Service

Notice of Proposed Rulemaking  
and Order Establishing Joint Board  
CC Docket No. 96-45

TO THE HONORABLE COMMISSION:

Enclosed please find an original and four copies of Comments to be filed with the Commission in the above-referenced matter. Please time/date stamp the additional copy and return it to the undersigned in the enclosed, stamped envelope. In addition, two (2) additional copies are marked as "Extra Public Copy" pursuant to the Commission's Public Notice of March 22, 1996.

Respectfully submitted,

*Blossom A. Peretz*

Blossom A. Peretz, Esq.  
Ratepayer Advocate

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cc: Service List

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**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

**IN THE MATTER OF THE  
FEDERAL-STATE JOINT BOARD ON  
UNIVERSAL SERVICE**

**NOTICE OF PROPOSED RULEMAKING  
AND ORDER ESTABLISHING JOINT BOARD**

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**FCC 96-93**

**CC DOCKET NO. 96-45**

**COMMENTS OF  
THE NEW JERSEY DIVISION OF RATEPAYER ADVOCATE**

**April 11, 1996**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of the	)	FCC 96-93
Federal-State Joint Board on	)	
Universal Service	)	
	)	CC Docket No. 96-45
Notice of Proposed Rulemaking	)	
and Order Establishing Joint Board	)	

**COMMENTS OF THE NEW JERSEY DIVISION OF THE RATEPAYER ADVOCATE**

The New Jersey Division of the Ratepayer Advocate ("Advocate" or "Ratepayer Advocate") files these comments concerning the Notice of Proposed Rulemaking and Order Establishing Joint Board ("Notice") for the implementation of universal service directives under the Federal Telecommunications Act of 1996 ("Act" or "1996 Act").<sup>1</sup> The Ratepayer Advocate is a newly reorganized agency pursuant to the New Jersey Reorganization Plan No. 001-1994. Our role, to protect and advance the interest of residential ratepayers in New Jersey, has been broadened to include representation of all classes of ratepayers -- residential, commercial and industrial-- and to be more involved in the policy and planning of laws and regulations which impact all New Jersey ratepayers. Our new mandate in the area of policy and planning is designed to afford the consumer a stronger voice in long range utility planning for the state.

The following comments focus on those issues which the Advocate believes will be important to preserve and protect the rights of consumers in this current era of the deregulation of the telecommunications industry. These include: 1) safeguarding the rights of consumers in a competitive market; 2) addressing the needs of low-income consumers in all universal service provisions; and 3) the deployment of advanced telecommunications services for not-for-profit schools and libraries at discounted rates. The provisions of the 1996 Act provide the Federal Communications Commission ("Commission") and the state public utility commissions with the ability to create a new definition of universal service which will ensure that consumers will be the ultimate beneficiaries of the rewards of the new era of the competitive telecommunications superhighway.

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<sup>1</sup> Telecommunications Act of 1996, Pub. L. No. 104-1-4, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. §§ 151 et. seq.)(hereinafter "Act")

## **II. Goals and Principles of Universal Service**

The Commission requested comment on how each of the seven principles enunciated in Section 254(b) of the Telecommunications Act should influence its policies on universal service. Those comments are enumerated below under each section heading.

### **(1) QUALITY AND RATES.**

Sec. 254(b)(1) states that “Quality services should be available at just, reasonable and affordable rates.” The availability of quality service at affordable rates is a laudable goal, which the Commission should take all reasonable measures to fulfill. The Ratepayer Advocate concurs with Congress that in providing universal service, the Commission must ensure that “just and reasonable” rates are “affordable” for all citizens, including those of low income, or those in high cost areas due to geography and other reasons. Only through the provision of affordable rates will greater household penetration occur for all low income ratepayers in all geographic locations

Historically, much of the focus in providing universal service has been on the need to provide for an infrastructure, primarily through distribution and other facilities, that ensures that a line passes by most if not all houses and businesses in the state, so that all potential customers can have service. A second facet of universal service, which has become more important in this era of competition, is universal affordability of service. Recognizing that affordability of service depends on the price of service and the customer's income, universal service policies must also ensure that service which is made physically available to the consumer will also be provided at “affordable” rates, regardless of their income level or geographic location. With the introduction of coaxial cable and fiber optic technology, continuing new technological advances will change the manner in which traditional telephone lines are provided, and will also place greater importance on the need for access to telecommunications services. As acknowledged in the Act, “universal service is an evolving level of telecommunications services,”<sup>2</sup> which continually increases the importance of having the ability to access the public switched network in order to allow all citizens to reap the benefits of the “information superhighway.”

The Commission also requests comments on the appropriate measures to assess whether “affordable services” are being provided to all Americans. As suggested by the Commission, the Advocate agrees that the use of subscribership levels of telecommunications services among targeted populations would be an effective indicator to assess affordability of telecommunications services. The Ratepayer Advocate believes that the measurement of the affordability of basic telephone service is an issue of continuing concern, particularly in New

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<sup>2</sup> Section 254(c)(1).

Jersey, due to the decline in New Jersey's penetration rate over the last several years.<sup>3</sup> This decline evidences the need for solutions which will allow consumers to connect to the public network, and retain service within their budgets.

## (2) ACCESS TO ADVANCED SERVICES

The Commission requested comment on how it should design its policies to foster access to advanced telecommunications and information services for "all regions," as required under Section 254(b)(2). The Advocate believes that the achievement of this goal will be important in removing limits on the availability of advanced telecommunications and information services for all ratepayers in all communities. In no instance should customers lack access to services because carriers choose not to offer services in a particular community. For example, in some instances, consumers seeking advanced services, such as Integrated Services Digital Network (ISDN) are rebuffed by telecommunications carriers, who refuse to offer it unless there are a sufficient number of consumers in the same geographic area who also request access to the service.<sup>4</sup> The Commission must institute measures to uphold the goal to ensure that all Americans have equal access to the information superhighway. The geographic location of a customer should not become a barrier preventing the ability to access certain services.

The Advocate suggests that the Commission look at other alternatives to ensuring such access, without imposing requirements that operate as barriers to competition for new market entrants. For example, community points of access to advanced services could be provided, at locations such as schools, museums, libraries, etc., to provide a central location where all citizens in a community could have access to advanced telecommunications and information services.

The Commission requested comments on which advanced services should be provided, under the objective of Section 254(b)(2) of the Act. The Advocate believes that those advanced services which enhance educational opportunities, such as distance learning and Internet access, should be provided "for all regions." These technologies are discussed later in Section IV.B. of these Comments. The services provided will ultimately depend on technological development and the needs and desires of the community. For example, communities with an interest in faster access to the Internet would probably be interested in high speed transport lines which provide this service. However, the types of services should not be limited only to those services which

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<sup>3</sup> The penetration rate for New Jersey declined from 94.3% in 1993 to 92.9% in 1994, and is now below the national rate of 93.9%. See FCC Monitoring Report, CC Docket No. 87-339 (May 1995) hereinafter, "Monitoring Report."

<sup>4</sup> See Edmund L. Andrews, *Steep Hurdles to a Web Shortcut*, N.Y. Times, March 25, 1996, at D1, D6.

telecommunications carriers are currently willing to offer. The FCC should look to expand the offerings of advanced telecommunications services as new technologies develop.

The Commission requested comments on how to provide access effectively to Americans in various geographic regions. The Advocate suggests that the Commission implement rules requiring that providers of service should bear the costs of overcoming geographic or other problems to ensure that customers have access to services. These providers could be eligible for assistance from the Federal universal service funding mechanisms for the documented costs of providing services to customers in those areas where there is an additional cost to ensure that all consumers receive access to telecommunications services.

### (3) ACCESS IN RURAL AND HIGH COST AREAS

Section 254(b)(3) provides that “Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.” The Advocate believes that this goal will be very important to ensuring the availability of services, particularly for low-income and rural consumers. Access to telecommunications services should not be limited based upon a customer’s income level or geographic location. Contributions through universal service funding mechanisms should be used to ensure that wide disparities do not exist between prices for services in rural and urban areas.

### (4) EQUITABLE AND NONDISCRIMINATORY CONTRIBUTIONS

Section 254(b)(4) provides that “[a]ll providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.” The Ratepayer Advocate agrees that all providers should participate in the effort to maintain or achieve universal service, including cable TV companies providing telephone service, cellular, personal communications systems (PCS) and other wireless technologies. Contributions to a universal service fund should be derived on a very broad basis, including all competing carriers, to the extent feasible, to provide a strong foundation for a funding mechanism.

The Commission requested comment on the standards which should be used to determine which, if any, providers might be treated differently than others, for equitable reasons. The Ratepayer Advocate strongly believes that funding should be competitively neutral and as broadly based as possible. We believe that the Commission, as well as state utility commissions should strive to develop policies that are designed to encourage all carriers to participate in

helping achieve universal service. This is an important goal that should not be left to the incumbent LECs alone. Furthermore, if obligations for contributions to universal service funding mechanisms are limited to the incumbent carriers, the risk exists that these policies will inhibit the competitive process, or skew that process to the advantage of one type of competitor. Although the Commission should act within the spirit of the Act to provide a “pro-competitive, de-regulatory national policy framework”<sup>5</sup> for accelerating the deployment of new technology nationwide, all new market entrants should still be required to contribute to efforts to preserve and advance universal service policies. A plan that favors or disadvantages a specific competitor or industry is likely to become vulnerable in time if it relies on only one source for its preservation.

#### (5) SPECIFIC AND PREDICTABLE SUPPORT MECHANISMS.

See discussion in Sections III.B and III.C.

#### (6) ACCESS TO ADVANCED TELECOMMUNICATIONS SERVICES FOR SCHOOLS, HEALTH CARE, AND LIBRARIES

See discussion in Section III.C.

#### (7) ADDITIONAL PRINCIPLES

Section 254 (b)(7) provides that universal service policies should also take into account “(s)uch other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this Act.” The Commission requested comment on whether the FCC should ensure that the means of distributing universal service support should be competitively-neutral, with the least amount of regulation possible consistent with their statutory obligations. The Ratepayer Advocate believes that any universal service mechanism employed should be competitively neutral, both in the manner in which funds are collected and in the manner in which they are disbursed. Any funds which are distributed should flow to any carrier that is contributing to the universal service mechanism based upon competitively neutral criteria. Competitive neutrality is desirable not only because it is fair, but also because it gives a universal service plan the longest assured life because it would not be tailored for the exclusive benefit of the incumbent LECs. In addition, it will provide incentives to new market entrants to provide new advancements in technology.

The Commission requested comment on whether and to what extent concerns for low-

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<sup>5</sup> S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996).

income consumers or those in rural, insular, or high cost areas can or should be articulated as additional universal service principles pursuant to Section 254(b)(7) or should be considered in determining whether a particular service is "consistent with the public interest, convenience, and necessity under Section 254(c)(1)(D)." The Ratepayer Advocate believes that concerns for low-income consumers or those in rural, insular or high cost areas should be considered in both contexts. Concerns for these groups of consumers could be articulated through additional universal service principles pursuant to Section 254(b)(7), to ensure that their particular needs are met within the context of providing universal service. For example, carriers could be required to offer a low-income assistance program for eligible subscribers, with some discounted level of service, and waivers of service or connection charges. In addition, the Ratepayer Advocate believes that those services which can aid in increasing penetration rates for low income consumers and those in rural, insular or high cost areas would be deemed "consistent with the public interest, convenience and necessity" of providing access to the information superhighway to all citizens, regardless of income or geographic location.

The Commission requested comment on their interpretation of the implementation of Section 254(c)(1) of the Act, which states:

"[T]he Joint Board in recommending, and the Commission in establishing, the definition of the services that are supported by Federal universal service support mechanisms shall consider the extent to which such telecommunications services-

(A) are essential to education, public health, or public safety;

(B) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;

(C) are being deployed in public telecommunications networks by telecommunications carriers; and

(D) are consistent with the public interest, convenience, and necessity."

The Commission requested comment on its interpretation of this section as providing for the Commission and the Federal State Joint Board ("Joint Board") to include services which do not meet all of the four criteria identified above for support through Federal universal service. The language in the Act requires that the Commission "consider the extent to which" the four criteria listed above apply to services considered for support by universal service mechanisms. The Ratepayer Advocate believes that the Commission, the Joint Board, and state utility commissions should not be precluded from considering additional criteria, outside of those listed above. In addition, the Commission, the Joint Board, and state utility commissions should retain the option of including services for universal service support which may not meet all four of the criteria.



For example, there may be advanced services currently being used by schools, libraries and health care providers, which are not currently being offered to residential customers. Although these services may not meet the criteria in Section 254(c)(1)(B) listed above, they may still be deemed to be of significant value for consumers to require support by universal service funding mechanisms.

The Commission requested comment on how they should evaluate whether a service or feature is “essential to education, public health or public safety”, as required under Section 254(c)(1)(A) of the Act. The Ratepayer Advocate believes that the Commission should review each service and determine whether it: 1) extends and enhances the instructional process for all students, and is vital in helping students meet core curriculum standards; 2) improves quality, accessibility and affordability of health care services; or 3) provides essential security access for the protection of consumers, e.g. 911 services. The Commission should also look at any effects on the consumer due to the unavailability of such services if they were not supported by universal service funding mechanisms.

### **III. Support for Rural Insular and High-Cost Areas and Low-Income Consumers**

#### **A. Goals and Principles**

The Commission requested comment on standards for evaluating the affordability of telecommunications services, as provided under Section 254(b). The Ratepayer Advocate strongly believes that the best standard for evaluating affordability would be one which uses a narrowly drawn field where the income of an area could be correlated with the level of telephone subscribership and use. For example, a review of penetration rates for central offices or wire centers served by areas which have experienced low levels of telephone subscribership could prove to be a reliable indicator on the affordability of prices in these areas.

The Commission also requested comment on whether the Act requires that all regions of the country must have access to all telecommunications and information services, and if so, how this can best be effectuated in a “pro-competitive, de-regulatory environment.” The Ratepayer Advocate believes that the goal of any universal service program should be to provide access to all telecommunications services on the broadest possible basis. The key in implementing these provisions is ensuring that there are no areas of the country which are unable to obtain access to those services which they desire.

#### **B. Support for Rural, Insular and High Cost Areas**

##### **1. What Services to Support**

The Commission requested comments on the suggestion of the following services proposed as “core” services that would receive universal service support, with respect to rural, insular and high cost areas:

- (1) Voice Grade Access to the Public Switched Network;
- (2) Touch-tone;
- (3) Single-party Service;
- (4) Access to Emergency Services (911);
- (5) Access to Operator Services;

The Ratepayer Advocate agrees that all of the above-referenced services should be included among those services to receive universal service support for rural, insular and high-cost areas. All five services meet the criteria of Section 254(c)(1) for evaluating those services to be included in the definition of universal service for purposes of receiving Federal support. The Ratepayer Advocate also believes that, with respect to 911 services, the provision of Enhanced 911 (E911) should also be included. The added capabilities of E911, such as automatic number identification and automatic location information, have proven invaluable to those in the emergency services field, to assist in locating persons in need of assistance when these services are used. In addition, the Commission should require that directory assistance services be included within the operator services provided within the definition of universal service.

The Commission requested that commenters identify additional services other than those listed above that should be included among the services that should receive universal service support, based on the four criteria specified in Section 254(c)(1). The Ratepayer Advocate suggests that the following additional services be included: (1) access to interexchange carriers (IXCs), on an equal basis; (2) free local calling areas within a "community of interest"; and (3) publication/distribution of an annual local directory.

Without access to IXCs, consumers will be unable to call outside of their local calling area, thus placing them at a disadvantage in reaching other customers and fully utilizing the network. The majority of residential telephone subscribers receive service from an IXC. In addition, access to IXCs should be provided on a uniform basis, with consumers being able to access their IXC on a 1+ dialing basis, without having to dial extra digits. Access of this nature would appear to be essential to education, public health and safety, and consistent with the public interest, convenience and necessity.

Free local calling areas within a "community of interest" are also an important service which the Commission should consider including within the definition of universal service. Customers should be guaranteed the ability to make calls to "community points of interest," such as the local school, hospital, library or municipal offices, without having to incur toll charges. These are services which are essential to education, public health or public safety, and are consistent with the public interest, convenience and necessity.

In addition, the provision of an annual local directory is another service which should be

included in the definition of universal service. The majority of residential customers have maintained listings in these directories, and they have been historically relied upon for obtaining access to fellow subscribers on the network. Without a directory, customers will lose an important benefit flowing from the public switched network.

## **2. How to Implement**

The Commission requested comment on whether support for rural, insular and high-cost areas should be limited to residential users or residential and single-line business users, or should be provided to all users in such areas. The Ratepayer Advocate recommends that the support should be limited to residential users, because affordability issues and the inability of low-income customers to afford telecommunications services are primarily residential issues, notwithstanding that some commercial and industrial customers might benefit from being able to receive assistance from a universal service fund. Moreover, it would be inappropriate to subsidize some businesses, by allowing them to be eligible for universal service fund assistance, while not making similar assistance available to similar businesses located in other areas.

The Ratepayer Advocate believes that universal service funds should flow to any carrier that contributes to the universal service fund, based upon competitively neutral criteria, and the amount of the contribution to the fund. For instance, if a cable TV company offers telephone service to residential customers in a high-cost area, it should have the obligation to contribute to the fund, as well as the opportunity to receive universal service funding support, such as that received by the incumbent LEC in that area. Properly designed, a universal service fund can also ensure that the less populated areas have a fair chance at receiving some of the benefits of competition, since competitive carriers may be willing to enter high-cost markets if they will be eligible for the same programs that are designed to support the incumbent carrier.

### **a. How to Determine “Affordable” and “Reasonably Comparable”**

The Commission requested comment on whether a subsidy should be provided for services using other than a primary line to a principal residence. The Ratepayer Advocate recommends that the subsidy should be made available only to the primary line of a principal residence. The goal here should be to minimize the size and administration of the fund, to the extent practicable and consistent with meeting other requirements of the Act. Providing a subsidy to lines other than the principal residential line would be inconsistent with such a goal.

The Commission requests comment on how it should determine rate levels that should be "affordable" and "reasonably comparable" for services identified as requiring universal service support, as required under Sections 254(b)(3) and 254(I) of the Act. The first step should be to determine the geographic areas for which support should be made available. The services for which assistance should be provided and the determination of eligibility should be determined by

narrowly-drawn geographic areas. The wire center approach in the Benchmark Costing Model,<sup>6</sup> referenced subsequently in the Notice, is a starting point, although it is likely that it will be necessary to consider subsidies in even smaller areas. For example, in some areas such as southern New Jersey, the wire centers can cover a significant territory, which likely would involve considerable diversity in income. Even in some of the smaller wire centers in northern New Jersey, it is possible to go from relatively wealthy neighborhoods with high penetration to relatively poor low-penetration areas in a few blocks, all of which may be covered by a single wire center. We recommend the use of wire centers as a "first cut," provided that appropriate consideration is given for identification and assistance to low-penetration enclaves within higher income areas.

In a related matter, the Commission seeks comments as to whether the use of an incumbent LEC's wire centers as the geographic unit for calculating universal service support accords with the policy of competitive and technological neutrality. As stated above, the incumbent LEC's wire centers can only be a starting point for identifying areas that appropriately require universal service support. The ultimate goal must be to identify the customers, not the companies, that need assistance.

While the absolute measure of affordability would be the cost of such services as a percentage of disposable income, as a practical matter it is likely that the Commission will have to resort to other measures as proxies for affordability. Penetration should be the principal indication that telecommunications services are not affordable in an area. The Commission should determine that a penetration rate in a wire center that is more than 10 basis points below the National Average penetration rate is *prima facie* evidence that the services are not affordable to a substantial portion of the population in a wire center, or perhaps other smaller geographic area. The Commission should also monitor trends in penetration rates, with assistance from the states, because a decline in penetration rate would be evidence that prices were becoming unaffordable.

In monitoring penetration rates, it will be important to recognize that universal service consists of more than one service, and is evolving to include some advanced services such as ISDN. As such, it will be necessary to measure penetration in more than one dimension, since an appropriate penetration rate for touch-tone service would be very high, whereas the penetration rate for ISDN, while still an important service, likely would be at a lower level.

The mechanisms to be established in determining that rate levels are affordable should

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<sup>6</sup> MCI Communications Inc., NYNEX Corporation, Sprint/United Management Co., and US West, Inc., *Benchmark Costing Model: A Joint Submission*, Copyright 1995, CC Docket No. 80-286 (Dec. 1, 1995).

recognize that affordability is a function of other variables in addition to penetration and cost relative to disposable income. In addition, any universal service support should include reasonable and appropriate incentives for efficiency. As such, there are a number of areas in which universal service support would be inappropriate.

It is important to recognize that telecommunications companies are multi-product entities, with many opportunities to transfer cost between services and affiliates. The pricing decisions that they make could result in some universal services becoming unaffordable, although if these services were priced at cost, they would be affordable. In such instances, universal service support may be inappropriate.

Another principal that must be considered in establishing and implementing a subsidy is that a high-cost company receiving universal service subsidies should not, because of the subsidy, earn more than a low-cost company providing comparable service under comparable conditions. The Commission must consider all factors, including manipulation of earnings through affiliate transactions, that could cause earnings to be misstated or prices to be far in excess of cost, thereby making services unaffordable when they otherwise would be affordable.

The Commission asks whether support should be based on achieving specific end-user prices. Since the goal is an appropriate level of availability and use of telecommunications services, as measured in part by penetration, establishing specific end-user prices would not be appropriate. Moreover, a specific price that might cause services to be affordable in one section of the country might not make them affordable in another.

#### **b. How to Calculate the Subsidy**

The Commission seeks comment on methods for determining the level of support required to assure that carriers are financially able to provide "universal services" in rural, insular and high-cost areas. In determining the need for universal service support, the Commission should look at the financial ability of the consumer to afford the carrier's cost of providing service to an area. Universal service support may not be necessary in all high-cost areas, to ensure provision of service. For example, support would not be appropriate in a high-income high-cost area. For similar reasons, high-income areas that are rural or insular would not necessarily warrant support. But a low-cost low-income area, where penetration is low, would warrant support. Therefore, while it may be relevant to identify high-cost areas, such identification does not lead to any conclusions concerning where support is needed.

Similarly, as discussed above, since telecommunications providers are multi-product companies, the Commission should implement procedures to assist in determining the financial ability of a carrier to provide universal services. Where penetration rates for a service supported by universal service mechanisms are substantially lower than the national average, the

Commission should take steps to ensure that the carrier providing service in that area is pricing those low-penetration services at no more than appropriately-measured cost. Low penetration rates as a result of the lack of competition in an area, and high mark-ups in that area, should not translate into universal service subsidy. The appropriate response in such conditions should be a mandated reduction in price.

Where subsidy is required, it is important to develop a mechanism that is administratively easy to implement. The cost of administration must remain low relative to the total amount of subsidy. Accordingly, a subsidy should be allowed contingent on the carrier's commitment to reduce the starting price, before subsidy, to appropriately-measured cost. Such a cost may be on the basis of the most efficient technology, without regard to the carrier's actual cost. If a subsidy is needed to reduce the price below that appropriate cost, then a subsidy should be allowed that enables the price to be reduced to no more than 10% above the national average price for comparable services.

The Commission seeks comment on the continued use of jurisdictional separations rules as a basis for subsidy. Historically, subsidy has been afforded to high-embedded cost companies with an extra subsidy provided to small companies. Since central office switches are now largely special-purpose computers, and since these computers are now widely available at very standardized prices, it is possible that special subsidies for small companies may no longer be appropriate. The Commission should study this issue.

The Commission should strongly consider the elimination of separations rules as a basis for subsidy. The use of separations as a basis for subsidy results in an increase in the *pro forma* interstate revenue requirement, while reducing the *pro forma* intrastate revenue requirement. This does not change the total revenue requirement of the company, and such interstate/intrastate revenue requirement shifts would not affect those companies that are not subject to separations rules. Ultimately, the goal of the universal service fund should be to increase the penetration rate for the specific services comprising the universal service basket. Moreover, that increase in penetration is most needed in low-income areas, that may have little to do with the size of the companies providing service or those companies' costs. Accordingly, while the universal service fund of the past may appropriately have focused on small companies with high costs, it is now time for a re-focus on the underlying goal of universal service, which is affordable service for all, particularly those who cannot at this time afford service.

The Commission seeks comment generally on the use and propriety of the Benchmark Costing Model in determining eligibility for subsidy. While the Model ultimately may provide valuable assistance for determining what the costs in an area should be, the high-cost areas identified by the Model are not necessarily areas in which a subsidy should be implemented. As noted earlier, subsidy would not be appropriate in high-cost areas that also are high-income areas.

The Commission seeks comment on a number of issues concerning the Benchmark Costing Model. In principal, the model's exclusion of business lines is appropriate, since universal service support should focus on assistance to obtain services in the primary residence. We repeat, however, that the Model's theoretical identification of high-cost areas does not identify areas that necessarily require subsidy. Some high-cost areas, as well as some low-cost areas, will require assistance as a result of low-penetration arising out of low-income.

The Commission seeks comment on whether a competitive bidding process to set the level of subsidies required in rural, insular and high-cost areas would be consistent with Section 214(e). As we understand it, competitive bidding would be used to identify the amount of subsidy available in an area, but not to determine eligibility for such subsidy. As such, the competitive bidding proposal does not appear to be inconsistent with Section 214(e). However, we question whether the competitive bidding proposal should be focused on high-cost, rural or insular areas *per se*. If anything, competitive bidding or any other subsidy rules implemented by the Commission should focus on where the problem is, not where the problem might be. "Rural, insular and high-cost areas" may well identify many of the problem areas, but not all of them. Moreover, "rural, insular and high-cost areas" that have high income and high penetration should not receive subsidy assistance.

### **3. Who is Eligible to Support**

The Commission requested recommended standards for compliance with the requirements that carriers advertise the availability of those services which are supported by Federal universal service funds, and the charges for those services "using media of general distribution," under Sections 214(e)(1)(B) of the Act. The Ratepayer Advocate believes that compliance with this provision is essential to ensure that consumers receive the proper information to allow them to make informed judgements on which of the services being offered will best serve their needs for telecommunications and information services.

In a competitive market, telecommunications users must receive adequate, ongoing disclosure of rates, terms and conditions of service. The provision of sufficient information for effective decision making is critical to the operation of a competitive market. Consumer protection rules are needed in order to secure the benefits of competition for all classes of subscribers, particularly residential users. The Commission should adopt specific standards or strengthen existing standards on such matters as truth-in-advertising; the presentation of clear, written terms of service/rates to consumers; and the provision of bilingual information. Consumers should not have to pay out-of-pocket costs to obtain such information. Furthermore, all local exchange carriers should be required, by rule, to demonstrate, in applications before the state utility commissions, that the carrier has established procedures to prevent deceptive and

unfair marketing practices and methods to comply with applicable billing standards.

Telecommunications customers today are faced with a level of choice that has never before been experienced in the communications industry. Soon, customers will begin to face choices in the form of local exchange competition. Customers need fair and accurate information concerning the calling options available to them and need a channel for addressing complaints. The Ratepayer Advocate recommends the following:

- \* That rules prohibiting the practice of “slamming” or in any manner changing a customer’s carrier without the customer’s authorization be strictly enforced;
- \* That printed advertising of all providers be required to indicate (in the same type) the toll-free number to be called if the customer has questions or complaints about the service offered by the carrier. This is particularly necessary if the offering involves a new or alternative billing plan which may depend on a number of factors to discern its true cost savings. Consumers should receive clear information, in English and in Spanish, on billing, collection, disconnect practices, and unit costs, so that they can make intelligent price comparisons among competitive offerings.
- \* That all consumers will be provided with easily understood descriptions of telecommunications services, how to use the services, and how much such services will cost, and how and where consumers can file complaints.
- \* That in each state, an industry-wide home page be created on the World Wide Web, available to all customers throughout the state, on which the rates and promotional materials of all telecommunications providers are posted. As in California, specific billing requirements should include the company name, any billing agent, toll-free inquiry number, payment dates, period of coverage, late payment charge policy, methods of payment, and name/address of the agency responsible for complaints.
- \* That, as in California, rules be developed to govern customer deposits, which may be used as a form of security for certain customers based on credit history.
- \* That, as in California, and consistent with current federal rules on cable television rates, prior written customer notice be required before the implementation of major rate increases.



- \* That clear rules also govern a carrier's right to discontinue certain services for nonpayment of bills, only upon written notice.

The Commission requested comment on how it should implement its responsibilities under Section 214(e)(3) of the Act, which requires the Commission (for interstate services) and the State commissions (for intrastate services) to designate an eligible telecommunications carrier to provide services for any unserved community, and whether it should develop a cooperative program with the State commissioners to ensure all areas receive service. Until the transition to effective competition is completed, the Ratepayer Advocate considers it imperative that customers be protected from monopoly power abuses. This protection includes a reasonable assurance that service will be available in all areas, including those where new entrants have not been attracted. Accordingly, the incumbent local exchange carrier should continue to provide service throughout its service territory on reasonable terms and conditions. It should not be allowed to withdraw from the market unless and until this can be accommodated without damaging the public interest. In this sense, the carrier of last resort ("COLR") concept has validity, and should be maintained during the transition to competition. At this time, only the incumbent LEC can discharge this function. However, this obligation as a COLR does not provide a valid basis for adopting universal service or other regulatory policies that favor the incumbent, to the detriment of new entrants.

The Commission should also implement measures to ensure that customers which may not be targeted by new competitors in the market for various reasons are not abandoned without a carrier. This is a serious concern, particularly for low-income customers, and should be addressed by the Commission. Although new entrants should not face regulatory barriers in targeting their services for selected customer classes, incentives should also be provided to ensure that all customers are able to take advantage of the benefits of a competitive market through increased choice of providers.

For example, recently, in the Universal Service proceedings at the Pennsylvania Public Utility Commission, Bell Atlantic advocated a "Pay or Play" scheme. Under this proposal, carriers that do not provide service to the entire local exchange area, would incur higher interconnection costs. The Ratepayer Advocate does not agree with this approach. In addition to its obvious complexity of operation and administration, it embodies a negative approach to competition--competing carriers are to be fined, in effect, if they are unable, or unwilling, to enter particular markets. This is hardly the free enterprise solution. It not only violates the principle of competitive neutrality, it also imposes a formidable barrier to entry. The Ratepayer Advocate believes that it would be a more preferable solution to offer universal service payments to any carrier avowedly willing to serve customers in high cost portions of the market. This would not impose a barrier to entry, and it might serve as an additional inducement to entry into these difficult markets. These efforts could be implemented alongside measures to ensure that all areas of service retain a COLR, as provided under the Act.

Another possibility would be to vary the amount carriers pay into the universal service fund, based upon the extent to which they serve residential, as opposed to just business customers. Thus, carriers that indirectly contribute to the universal service goal, by serving a high proportion of residential customers, would not be required to provide as large a monetary contribution to the universal service fund as a carrier which chooses to exclusively target business markets. In addition, the level of assistance received by a carrier could also be based on the number of services provided by the carrier which are supported by universal service mechanisms, as established by the Commission under Section 254(a)(2) of the Act<sup>7</sup>. For example, if a carrier chooses only to offer three of the five services designated for universal service support, the amount of support which the carrier receives from the universal service fund would be less than a carrier which chooses to offer all five of the supported services.

It has also been suggested that the COLR responsibility be auctioned off, with the successful bidder receiving the full amount of targeted support. This is not a reasonable solution, at least at this stage in the transition to a competitive market. The incumbent carriers enjoy numerous benefits as a result of their historic monopoly position. No other carrier has enjoyed these benefits, and no other carrier can realistically be expected to take their place as the carrier of last resort, at least in the near future.

### **C. Support for Low-income Consumers**

#### **1. What Services to Support**

The Commission requested comments on the designation of additional services for universal service support which are specifically appropriate for low-income users, to be added to the list of services recommended previously in this Notice for consumers in rural, insular, and high cost areas. As stated in this Notice, subscribership levels for low-income individuals fall substantially below the national average. The Ratepayer Advocate strongly believes that solutions must be implemented to address the problems which cause low levels of telephone subscribership among low-income consumers.

The ultimate issue is the problem of simple affordability. Penetration statistics support the notion that consumers do react to the price of basic local service, and that price can seem out of reach to households with relatively low incomes. It is then reasonable to assume that poverty per se is a major barrier to participation, and that no effort to achieve universal service, defined

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<sup>7</sup> "The Commission shall initiate a single proceeding to implement the recommendations from the Joint Board required by paragraph (1) and shall complete such proceeding within 15 months after the date of enactment of the Telecommunications Act of 1996. The rules established by such proceeding shall include a definition of services that are supported by Federal universal service support mechanisms. . . ."

as full voluntary participation by nearly everyone on the public switched network, will be fully successful unless the effort includes effective financial assistance targeted at low-income groups.

For some, the monthly cost of basic local service is a problem; while \$5 or \$9 a month may be of little concern to many middle-income and affluent families, this same monthly rate can loom large in the budgeting considerations of a low-income family, for whom food, clothing, and shelter may be far more pressing concerns than having a telephone in the home. Nevertheless, it is desirable to have these people on the network. When a social worker or other government employee needs to communicate with the low-income family, the alternative to a simple phone call could be extremely time consuming and costly. When an employer or potential employer attempts to contact them and finds they do not have a phone, the adverse impact can be quite large. Finally, when their friends and relatives want to talk to them, the benefits of having them on the network can be considerable.

However, the monthly rate is not the only problem discouraging low-income families from keeping a telephone in their home. Other problems include unaffordable connection charges and poor credit history, as evidenced by prior involuntary disconnections. The problem of connection charges, addressed generically by the Federal Link-Up America program, can be particularly acute in remote areas where providing a local loop to a new customer is extremely costly. A pattern of relocation once or more times in a year doubles the household's chance of nonsubscribership. Low-income households also experience a greater degree, than the general population, of high household mobility - a pattern of frequent changing of address, often for financial reasons (e.g., eviction for failure to pay the rent) - as distinguished from actual homelessness. For persons of very limited resources, frequent connection charges and security deposits are prohibitive. The Ratepayer Advocate recommends programs which offer deferred payment plans for service commencement charges, as well as reductions in, or waiver of, security deposit requirements for low-income consumers who do not have poor credit histories.

The Commission requested comment on its overall responsibilities under Sections 1 and 254 of the Act with regard to low-income consumers. With the rapid changes now occurring in the telecommunications industry due to increased competition and deregulation, the Ratepayer Advocate maintains that measures must be taken to ensure that regulators and carriers are not deterred from continuing to advance common universal service goals. The Commission has the obligation to ensure that consumers are educated about currently available low-income assistance programs and that low-income residential ratepayers are included as recipients of all state and federal entitlements. Special rates or subsidies for low-income ratepayers will not only help to ensure universal service for all citizens, but will also increase the carriers' revenue stream, reduce uncollectibles, reduce disconnections, and retain customers.

The Commission requested comment on whether free access to the telephone service provider for low-income customers should be included within the group of services receiving

universal service support. The Ratepayer Advocate strongly recommends that access to telephone service providers to obtain information about telephone service activation, termination and repair be made available free of charge. More importantly, the need for low-income consumers to have free access to information regarding assistance programs cannot be overstated. One of the barriers for low-income consumers in commencing or maintaining telephone service is lack of consumer awareness or knowledge of low-income assistance programs currently available. In the Camden, N.J. penetration study,<sup>8</sup> it was noted that not a single person who responded to the surveyors knew of Bell Atlantic - New Jersey's (BA-NJ) participation in the Federal Link-Up America program. Participation in the program has been very low within the state, with only 567 participants in 1994, who received a total of \$11,814.<sup>9</sup> This is less than 0.07% of the total amount of participants and aid provided under Link-Up in that year.<sup>10</sup> The Ratepayer Advocate maintains that increased consumer education and information efforts are vital to providing viable solutions to preserve and maintain universal service. Consumers must have sufficient information to attain the greatest level of benefit with increased competition for telecommunications services providers.

The Commission also requested comment on whether toll blocking or limiting services should be offered to low-income subscribers without charge or at a discount. The Ratepayer Advocate strongly urges that toll blocking services be provided to low-income consumers. The existence or threat of unaffordable toll charges continues to be a major barrier to commencing or maintaining subscription for low-income consumers. Significantly, recent studies have indicated that many, if not a majority, of households now lacking basic telephone service once received such service and were disconnected, usually for nonpayment of toll charges.<sup>11</sup> As long as dial tone service automatically includes access to long-distance service, and as long as that service is available on credit, a significant portion of low-income subscribers will incur toll charges beyond their means and suffer disconnection as a consequence. Some low-income persons, recognizing this danger, will decline to subscribe at all. While the trend towards lower toll rates will reduce

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<sup>8</sup> Mueller and Schement, *Universal Service from the Bottom Up: A Profile of Telecommunications Access in Camden, New Jersey* (Rutgers University Project on Information Policy, 1995).

<sup>9</sup> Federal Communications Commission (FCC) Monitoring Report, Table 2.2: *Link Up America: Lifeline Connection Assistance and Deferred Payments, January 1 thru December 31, 1994*. (May 1995) (hereinafter "Monitoring Report").

<sup>10</sup> Monitoring Report, 57-58.

<sup>11</sup> See *supra* note 7 and the disconnect studies performed by the Regional Bell Operating Companies (RBOCs) and GTE at the Commission's request in CC Docket No. 80-286 during the 1980s.

this problem, it will not eliminate it. As an effective means of reducing this problem, the Ratepayer Advocate recommends that free blocking of long-distance and other calls that incur usage charges be offered to low-income consumers, and receive support from Federal universal service mechanisms.

Without doubt, if high variability in bills and high usage-based bills are significant factors in low penetration, toll blocking would be a significant factor in improving penetration. The Commission has already recognized the effectiveness of toll blocking programs, citing its use by the Commonwealth of Pennsylvania as the most successful state in addressing problems of disconnection due to inability to control long-distance usage.<sup>12</sup> For the last decade, during which Pennsylvania has provided a toll blocking service, the state's overall penetration rate has become the highest in the nation (97 percent in 1994, up from 94.9 or 8th place a decade earlier).<sup>13</sup> Furthermore, among Pennsylvania households with incomes below \$10,000, subscribership as of March 1993 was 92.3 percent, significantly higher than the national average for that income group of 87.4 percent.<sup>14</sup>

While this option has been available in many jurisdictions for some time, it has been prohibitively expensive--e.g., in Maryland, until 1993, Bell Atlantic charged \$25.72 per month.<sup>15</sup> However, when the price is brought down, or eliminated, the chances of subscriber retention are increased. The declining costs of sophisticated switching services have made this prospect reasonable; today Maryland imposes only a one-time \$10 charge for its blocking service.<sup>16</sup> An even better alternative might be to allow customers to place a monthly limit on the minutes of toll usage, or the dollar amount of toll charges. A similar restriction could be placed on the excessive use of directory assistance. The family might determine, for example, that it can afford no more than \$15 a month for long-distance service. By allowing the family to restrict its expenditures to this level, the carrier would help society achieve universal service, and help itself by reducing its costs of uncollectible bills. The Ratepayer Advocate recommends that methods such as these which provide low-income consumers with tools to control their toll and long-

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<sup>12</sup> Federal Communications Commission, *In the Matter of Amendment of the Commission's Rules and Policies to Increase Subscribership and Usage of the Public Switched Network*, Notice of Proposed Rulemaking, CC Docket No. 95-115 at 5 (FCC No. 95-281, Adopted July 13, 1995).

<sup>13</sup> *Id.* at 5, n.10

<sup>14</sup> *Id.* at 5.

<sup>15</sup> *Id.* at 8.

<sup>16</sup> *Id.*

distance costs should receive Federal universal service support.

## **2. How to Implement and Who is Eligible for Support**

The Commission seeks comment concerning how the support mechanisms should apply to the services discussed in the Notice and, in particular, how support should be calculated and paid if the provider is not the local telephone company. The Ratepayer Advocate recommends that the Commission implement a comprehensive support system that is focused principally on those who need support – low-income customers who cannot afford the services comprising universal service at the prices at which those services are offered to them by the carrier or carriers serving their residences. Without affordable service, defined as service that they can and do actually take, these groups will remain disenfranchised and disaffected from society at large, ultimately with dire consequences for all. Accordingly, whatever system is adopted (lottery, cost-based, other) for determining support and eligibility, the carriers receiving such support should be those that actually provide service to and charge supported rates that enable low-income and other customers who otherwise would not be able to take the services to actually subscribe to them. That principal should apply, irrespective of whether or not the carrier is a local telephone company.

It also is important to realize that the local telephone company of the past no longer exists. Telecommunications convergence from both ends is resulting in telecommunications providers that are multi-product purveyors of computer-based services, not just switching, but also of information and high-bandwidth services. Future local telephone companies will be mixtures of former LECs, IXC's, competitive access providers (CAPs), cable TV and electric companies, if not other entities. As such, it makes little sense to limit subsidy support to the "local telephone company."

As stated previously, the Commission should determine that a penetration rate in a wire center that is more than 10 basis points below the National Average penetration rate is *prima facie* evidence that the services are not affordable to a substantial portion of the population in a wire center, or perhaps other smaller geographic area. The Commission should also monitor trends in penetration rates, with assistance from the states, because a decline in penetration rate would be evidence that prices were becoming unaffordable. A subsidy should be allowed contingent on the carrier's commitment to reduce the starting price, before subsidy, to appropriately-measured cost. Such a cost may be on the basis of the most efficient technology, without regard to the carrier's actual cost. If a subsidy is needed to reduce the price below that appropriate cost, then a subsidy should be allowed that enables the price to be reduced to no more than 10% above the national average price for comparable services.

#### **D. Ensuring that Supported Services for Rural, Insular, and High Cost Areas and Low Income Consumers Evolve**

The Commission requested comment on whether it would be useful to collect and publish certain basic information regarding technical performance levels of carriers subject to their jurisdiction. The Ratepayer Advocate believes that the availability of such information would prove a valuable resource for the public, regulating entities, and consumer advocacy groups in evaluating the service quality standards of competing carriers. Not only will it provide for a method for regulators to monitor the service quality standards of carriers, it will also provide additional tools for consumers to make informed choices for choosing the best carrier to serve their needs.

#### **IV. Schools, Libraries and Health Care Providers**

##### **A. Goals and Principles**

The Ratepayer Advocate believes that the charge given to the Commission in Section 254(b)(6) that “(e)lementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services” recognizes the increasing importance of technology in our society as the 21st century rapidly approaches. Providing discounts for these entities to advanced telecommunications services will assist in providing a telecommunications network that is universally available and affordable.

##### **B. Schools and Libraries**

###### **1. What Services to Support**

The Commission requested comment on what additional services carriers must make available to schools and libraries under Section 254(h)(1)(B) of the Act. The Ratepayer Advocate believes that the Commission should focus on advanced services being used in applications of educational technology, such as distance learning, video conferencing and access to the Internet.

Distance learning services, which provide two-way interactive video to provide links between two separate locations, are already being used by schools in New Jersey to expand their course offerings and curriculum. In June 1995, the New Jersey Board of Public Utilities (BPU) approved a tariff for this service being provided by Bell Atlantic-New Jersey (BA-NJ). The first education tariff of its kind in the nation, it allows schools to share a full motion video network being provided currently at 90 sites at specially discounted rates. Distance learning and video conferencing services could provide invaluable links between schools and libraries. The availability of services such as this at a discounted rate should be expanded to both libraries and health care providers.

Services providing access to the Internet for schools and libraries should also be provided. The Internet's wealth of on-line information has already been proven to be a powerful resource tool for students, educators, and both public and private businesses. It gives individuals and organizations a strategic advantage by leveraging this information as a strategic asset. Through the use of Internet tools, users can easily exchange electronic mail and access remote computing resources, databases, and information from anywhere in the world. Schools throughout the country have praised the Internet as a valuable learning tool, and new educational technology applications are being developed to assist in using the Internet's resources as a valuable teaching tool. However, for many schools, the connection costs for Internet access may prove prohibitive unless some type of discounted service is offered, and computers are made available for all classrooms.

## **2. How To Implement**

### **a. Establishment of the Interstate Discount for Schools and Libraries**

The Commission seeks comment on the factors to be used in formulating a discount methodology for universal service support for schools and libraries. The Ratepayer Advocate recommends that the Commission and Joint Board, as well as state commissions reject notions that "one size fits all." There is too much diversity of income and cost for a single formula to result in every school and library having *affordable* access to the advanced services that increasingly will become part of the evolving level of services that comprise universal service. It should be recognized that public schools and libraries are not independently financed; instead, their financing reflects the income and ability of the underlying populations using those schools and libraries to afford advanced services. It is likely that an area that has low penetration for advanced services also has schools and libraries that do not have these services because of a lack of funding. This is particularly true in this era of declining Federal and State support for education.

We assert that there is an obvious close correlation between the income of residents of an area, their ability to afford basic as well as advanced services that are included in the definition of universal service, and the ability of the schools and libraries serving these areas to afford those services. These are the areas that are most in need of access to the Internet and other advanced services on the evolving information highway. Therefore, the school and library discount should be focused first on these areas, and should be sufficient to ensure that those schools and libraries in low-income areas do, in fact, have the ability to receive those services. It should also be recognized that, in many instances, substantial capital outlays are required to take full advantage of such services (customer premises equipment (CPE) for ISDN, computers and modems for the Internet, expensive cable modems for cable TV-provided access to the Internet). Therefore, the subsidy should be substantial in these areas.



In addition, the Ratepayer Advocate believes that states should be encouraged to use their authority under Section 254(f) of the Act, to “adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.” States can use the knowledge of their educational authorities to review the individual needs of their school districts, and assess the best methods for implementation of the discounted rates.

**b. Terms and Conditions of Interstate Support for  
Telecommunications Carriers Providing Discounted Universal  
Services to Schools and Libraries.**

The Commission requested comment on what steps it could take to ensure that schools and libraries only receive discounts on services used “for educational purposes,” as required under Section 254(h)(1)(B) of the Act. The Ratepayer Advocate believes that this could be accomplished through some type of formal declaration, such as the written declaration suggested in this Notice. Each school which receives discounts for such services can provide a statement which provides assurances that measures will be taken to prevent the services from being used for other than “educational purposes.” Schools and libraries could be required to implement certain security measures, such as passwords, codes, or limited access to the facilities, to ensure that the services are used properly.

The Commission requested comment on how it should determine whether a request for service by a school or library is “bona fide,” as required in Section 254(h)(1)(B) of the Act. In New Jersey, legislation has been proposed which would provide local school districts with funding for training, instructions and use of technology in educational process.<sup>17</sup> However, to be eligible to receive funding, the local school district must have developed an educational technology plan which outlines the proposed use of the technology in the school. The Ratepayer Advocate recommends that the Commission could implement a similar requirement to determine whether a request for service is “bona fide.”

**V. Enhancing Access to Advanced Services for Schools, Libraries and Health Care  
Providers**

**B. How to Implement**

The Commission requested comment on any additional measures, besides discounts and financial support, that would promote the deployment of advanced services for schools, libraries

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<sup>17</sup> S. 796, 207th Leg., 1st Sess. (1996).